

AMENDED IN ASSEMBLY JUNE 30, 2014

AMENDED IN ASSEMBLY JUNE 18, 2014

AMENDED IN SENATE APRIL 21, 2014

SENATE BILL

No. 1243

Introduced by Senator Lieu

(Principal coauthor: Assembly Member Bonilla)

February 20, 2014

An act to amend Sections 149, 201, 312, 453, 4800, 4804.5, 11506, and 22259 of, and to add Sections 101.7, 154.1, 211, and 312.1 to, the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1243, as amended, Lieu. Professions and vocations.

(1) Under existing law, the Department of Consumer Affairs is comprised of various boards, bureaus, commissions, committees, and similarly constituted agencies that license and regulate the practice of various professions and vocations. Existing law requires those agencies to hold public meetings and provide public notice of a meeting.

This bill would require each of those agencies to offer a person requesting to receive notice of a meeting the option to receive that notice by regular mail, email, or both regular mail and email, and would require the agency to comply with that request. The bill would require an agency that intends to Web cast a meeting, to provide notice of intent to Web cast the meeting.

(2) Existing law authorizes certain agencies within the department, upon investigation and with probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by or registered

with the agency, to issue a citation including an order of correction. Existing law authorizes those agencies to notify the Public Utilities Commission if a person does not comply with a final order of correction, and requires the commission to require the telephone corporation providing the telephone services to disconnect the service.

This bill would apply those provisions to all agencies that comprise the department, and would delete the requirement that the advertising appear in a telephone directory.

(3) Existing law imposes specified duties on the department and allows the department to levy a charge for the estimated administrative expenses in advance on a pro rata share basis against funds of an agency comprising the department.

This bill would require the department to conduct a study of its system for prorating administrative expenses and to submit a report to the appropriate policy committees of the Legislature, on or before July 1, 2015, and on or before July 1 of each subsequent year, including the findings of the study and an accounting of the pro rata calculation. The bill would also require the department, if it engages a third-party consultant to assess the department's operations, to promptly, upon receipt of the consultant's final report on that assessment, to submit that report to the appropriate policy committees of the Legislature including the entire study upon its completion.

The bill would require the department to develop an enforcement academy, as specified, and to provide an opportunity for an employee of an agency comprising the department who performs enforcement functions to attend an enforcement academy, at least annually, to provide a solid, standard baseline of knowledge and practices for all employees who perform enforcement functions.

(4) Existing law requires an agency comprising the ~~board~~ *department* to investigate a consumer accusation or complaint against a licensee and, where appropriate, the agency is authorized to impose disciplinary action against a licensee. Under existing law, an agency comprising the ~~board~~ *department* may refer a complaint to the Attorney General or Office of Administrative Hearings for further action. Existing law requires the Director of Consumer Affairs to submit an annual report to the Governor and the Legislature, on or before January 1, that includes information regarding consumer complaints and the action taken on those complaints.

This bill would require the director's report to include specific, detailed information regarding those complaints and actions. The bill

would require the Attorney General to submit a report to the department, the Governor, and the appropriate policy committees of the Legislature, on or before January 1, 2016, and on or before January 1 of each subsequent year, that includes specified information regarding the actions taken by the Office of the Attorney General pertaining to accusations and cases relating to consumer complaints against a person whose profession or vocation is licensed by an agency comprising the department. The bill would require the Office of Administrative Hearings to submit a report to the same parties in the same timeframe as described above that includes actions taken by that office with respect to cases pertaining to those complaints.

(5) Existing law requires a newly appointed member of a board comprising the department to, within one year of assuming office, complete a training and orientation program offered by the department.

This bill would require the department to develop a board member mentor program to assign an experienced board member to mentor a new board member serving on a different board.

(6) Existing law regulates the practice of veterinary medicine. Existing law, until January 1, 2016, provides for a Veterinary Medical Board within the Department of Consumer Affairs. Existing law, until January 1, 2016, authorizes the board to appoint a person exempt from civil service to be designated as an executive officer of the board, as specified.

This bill would extend those provisions until January 1, 2017.

(7) Existing law regulates the practice of common interest development managers, and makes those provisions effective only until January 1, 2015.

This bill would extend the effectiveness of those provisions until January 1, 2019, and subject those provisions to review by the appropriate policy committees of the Legislature. The bill would also delete an obsolete reference.

(8) Existing law establishes the California Tax Education Council, a nonprofit organization, and requires the council to register and regulate tax preparers. Existing law makes those provisions effective only until January 1, 2015.

This bill would extend the effectiveness of those provisions until January 1, 2019.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 101.7 is added to the Business and
2 Professions Code, to read:

3 101.7. (a) An agency within the department that is required
4 to provide a written notice pursuant to subdivision (a) of Section
5 11125 Government Code, may provide that notice by regular mail,
6 email, or by both regular mail and email. An agency shall give a
7 person who requests a notice the option of receiving the notice by
8 regular mail, email, or by both regular mail and electronic mail.
9 The agency shall comply with the requester's chosen form or forms
10 of notice.

11 (b) An agency that plans to Web cast a meeting shall include
12 in the meeting notice required pursuant to subdivision (a) of Section
13 11125 of the Government Code a statement of the board's intent
14 to Web cast the meeting. An agency may Web cast a meeting even
15 if the agency fails to include that statement of intent in the notice.

16 SEC. 2. Section 149 of the Business and Professions Code is
17 amended to read:

18 149. (a) If, upon investigation, an agency designated in Section
19 101 has probable cause to believe that a person is advertising with
20 respect to the offering or performance of services, without being
21 properly licensed by or registered with the agency to offer or
22 perform those services, the agency may issue a citation under
23 Section 148 containing an order of correction that requires the
24 violator to do both of the following:

25 (1) Cease the unlawful advertising.

26 (2) Notify the telephone company furnishing services to the
27 violator to disconnect the telephone service furnished to any
28 telephone number contained in the unlawful advertising.

29 (b) This action is stayed if the person to whom a citation is
30 issued under subdivision (a) notifies the agency in writing that he
31 or she intends to contest the citation. The agency shall afford an
32 opportunity for a hearing, as specified in Section 125.9.

33 (c) If the person to whom a citation and order of correction is
34 issued under subdivision (a) fails to comply with the order of
35 correction after that order is final, the agency shall inform the
36 Public Utilities Commission of the violation and the Public Utilities
37 Commission shall require the telephone corporation furnishing

1 services to that person to disconnect the telephone service furnished
2 to any telephone number contained in the unlawful advertising.

3 (d) The good faith compliance by a telephone corporation with
4 an order of the Public Utilities Commission to terminate service
5 issued pursuant to this section shall constitute a complete defense
6 to any civil or criminal action brought against the telephone
7 corporation arising from the termination of service.

8 SEC. 3. Section 154.1 is added to the Business and Professions
9 Code, to read:

10 154.1. (a) The Legislature hereby finds and declares all of the
11 following:

12 (1) The department is currently providing opportunities for
13 employees of agencies comprising the department who perform
14 enforcement functions to attend an enforcement academy.

15 (2) It is in the best interest of consumers in the state for the
16 department to continue to provide these opportunities for
17 employees performing enforcement functions for each agency
18 comprising the department.

19 (b) The department shall provide an opportunity for an employee
20 of an agency comprising the department who performs enforcement
21 functions to attend an enforcement academy, at least annually, to
22 provide a solid, standard baseline of knowledge and practices for
23 all employees who perform enforcement functions. The department
24 shall encourage an agency executive officer, registrar, executive
25 director, bureau chief, enforcement manager, supervisor, or staff
26 member to attend an enforcement academy.

27 (c) The department shall develop the enforcement academy
28 curricula in consultation and cooperation with the Office of the
29 Attorney General and the Office of Administrative Hearings. The
30 curricula shall include, but not be limited to, complaint intake,
31 determining which cases should be referred for investigation,
32 preparing a case suitable for filing an accusation, and the
33 Administrative Procedure Act.

34 (d) The department shall develop and implement a measure of
35 training outcomes that includes a pretest and posttest of an
36 employee's knowledge of the training subject matter, and any other
37 performance measures that the department deems appropriate.

38 SEC. 4. Section 201 of the Business and Professions Code is
39 amended to read:

1 201. (a) A charge for the estimated administrative expenses
2 of the department, not to exceed the available balance in any
3 appropriation for any one fiscal year, may be levied in advance on
4 a pro rata share basis against any of the boards, bureaus,
5 commissions, divisions, and agencies, at the discretion of the
6 director and with the approval of the Department of Finance. The
7 department shall submit a report of the accounting of the pro rata
8 calculation of administrative expenses to the appropriate policy
9 committees of the Legislature on or before July 1, 2015, and on
10 or before July 1 of each subsequent year.

11 (b) The department shall conduct a study of its current system
12 for prorating administrative expenses to determine if that system
13 is the most productive, efficient, and cost-effective manner for the
14 department and the agencies comprising the department. The study
15 shall include consideration of whether some of the administrative
16 services offered by the department should be outsourced or charged
17 on an as-needed basis and whether the agencies should be permitted
18 to elect not to receive and be charged for certain administrative
19 services. The department shall include in its report pursuant to
20 subdivision (a) the findings of the study.

21 SEC. 5. Section 211 is added to the Business and Professions
22 Code, to read:

23 211. If the department hires a third-party consultant to assess
24 the department's operations, the department shall, promptly upon
25 receipt of the consultant's final report on that assessment, submit
26 that report to the appropriate policy committees of the Legislature.

27 SEC. 6. Section 312 of the Business and Professions Code is
28 amended to read:

29 312. (a) The director shall submit to the Governor and the
30 Legislature on or before January 1, 2003, and annually thereafter,
31 a report of programmatic and statistical information regarding the
32 activities of the department and its constituent entities. The report
33 shall include information concerning the director's activities
34 pursuant to Section 326, including the number and general patterns
35 of consumer complaints and the action taken on those complaints.

36 (1) The report shall include, at a minimum, all of the following
37 information:

38 (2) The total number of temporary restraining orders or interim
39 suspension orders sought by each constituent entity to enjoin
40 licensees pursuant to Sections 125.7 and 125.8, the circumstances

1 in each case that prompted the constituent entity to seek that
2 injunctive relief, and whether a restraining order or interim
3 suspension order was issued.

4 (3) Information relative to the performance of each constituent
5 entity, including all of the following:

6 (A) Number of consumer calls received.

7 (B) Number of consumer calls or letters designated as
8 discipline-related complaints.

9 (C) Number of complaint forms received.

10 (D) Number of convictions of licensees reported to the ~~board~~
11 *constituent entity*.

12 (E) Number of criminal filings reported to the constituent entity.

13 (F) Number of complaints and referrals closed, referred out, or
14 resolved without discipline, respectively, prior to accusation.

15 (G) Number of accusations filed and final disposition of
16 accusations through the constituent entities and court review,
17 respectively.

18 (H) Final discipline by category.

19 (I) Number of citations issued with and without fines.

20 (J) Number of cases in process more than six months after a
21 constituent entity receives information regarding the acts relevant
22 to a filed accusation.

23 (K) The average and median times in processing complaints
24 from when a constituent entity receives a complaint to each stage
25 of discipline and court review.

26 ~~(L) Final discipline by category.~~

27 ~~(M)~~

28 (L) Number of public reprimands issued.

29 ~~(N)~~

30 (M) Probation violation reports and probation revocation filings
31 and dispositions.

32 ~~(O)~~

33 (N) Number of petitions for reinstatement and the dispositions
34 of those petitions.

35 ~~(P)~~

36 (O) Caseloads of investigators for both original cases and
37 probation cases.

38 ~~(Q)~~

39 (P) Number of reports pursuant to Section 805 or Section 805.01
40 by type of peer review body reporting and, where applicable, the

1 type of health care facility involved and the number and type of
2 administrative or disciplinary actions taken by a constituent entity
3 with respect to those reports.

4 ~~(R)~~

5 ~~(Q)~~ Number of reports pursuant to Section 801.01 or 803.

6 ~~(S)~~

7 ~~(R)~~ The number of malpractice settlements in excess of thirty
8 thousand dollars (\$30,000) reported pursuant to Section 801.01.

9 ~~(T)~~

10 ~~(S)~~ Number of coroner's reports received by a ~~board~~ *constituent*
11 *entity*.

12 ~~(U)~~

13 ~~(T)~~ Average length of time for a constituent entity to reach each
14 of the following milestones in the enforcement process:

15 (i) Average number of days from when a constituent entity
16 receives a complaint until the ~~board~~ *constituent entity* assigns an
17 investigator to the complaint.

18 (ii) Average number of days from a constituent entity opening
19 an investigation conducted by the constituent entity staff or the
20 Division of Investigation to closing the investigation regardless
21 of outcome.

22 (iii) Average number of days from a constituent entity closing
23 an investigation to imposing formal discipline.

24 (iv) Average number of days for a constituent entity to conduct
25 a supplemental investigation for a case that was rereferred by the
26 constituent entity to the Attorney General to file an accusation.

27 (b) "Action," for purposes of this section, means a proceeding
28 brought by, or on behalf of, a constituent entity against a licensee
29 for unprofessional conduct that has not been finally adjudicated,
30 and a disciplinary action taken by a constituent entity against a
31 licensee.

32 (c) A report submitted pursuant to subdivision (a) shall be
33 submitted in compliance with Section 9795 of the Government
34 Code.

35 SEC. 7. Section 312.1 is added to the Business and Professions
36 Code, to read:

37 312.1. (a) The Attorney General shall submit a report to the
38 department, the Governor, and the appropriate policy committees
39 of the Legislature on or before January 1, 2016, and on or before

1 January 1 of each subsequent year that includes, at a minimum,
2 all of the following:

3 (1) Number of cases referred to the Attorney General by each
4 constituent entity comprising the department.

5 (2) Number of cases referred by the Attorney General back to
6 each constituent entity with no further action.

7 (3) Number of cases rereferred by a constituent entity to the
8 Attorney General after each constituent entity or the Division of
9 Investigation completes a supplemental investigation.

10 (4) Number of accusations filed by each constituent entity.

11 (5) Number of accusations a constituent entity withdraws.

12 (6) Average number of days from the Attorney General receiving
13 a case to filing an accusation on behalf of each constituent entity.

14 (7) Average number of days to prepare an accusation for a case
15 that is rereferred to the Attorney General after a supplemental
16 investigation is conducted by staff of a constituent entity or the
17 Division of Investigation for each constituent entity.

18 (8) Average number of days from filing an accusation to
19 transmitting a stipulated settlement for each constituent entity.

20 (9) Average number of days from filing an accusation to
21 transmitting a default decision for each constituent entity.

22 (10) Average of days from filing an accusation to scheduling a
23 hearing for each constituent entity.

24 (11) Average numbers of days from scheduling a hearing to
25 conducting a hearing for each constituent entity.

26 (b) The Office of Administrative Hearings shall submit a report
27 to the department, the Governor, and the Legislature on or before
28 January 1, 2016, and on or before January 1 of each subsequent
29 year that includes, at a minimum, all of the following:

30 (1) Number of cases referred by each constituent entity to each
31 office of the Office of Administrative Hearings for a hearing.

32 (2) Average number of days from receiving a request to setting
33 a hearing date at each office of the Office of Administrative
34 Hearings.

35 (3) Average number of days from setting a hearing to conducting
36 the hearing.

37 (4) Average number of days after conducting a hearing to
38 transmitting the proposed decision by each office of the Office of
39 Administrative Hearings.

1 SEC. 8. Section 453 of the Business and Professions Code is
2 amended to read:

3 453. (a) Every newly appointed board member shall, within
4 one year of assuming office, complete a training and orientation
5 program offered by the department regarding, among other things,
6 his or her functions, responsibilities, and obligations as a member
7 of a board. The department shall adopt regulations necessary to
8 establish this training and orientation program and its content.

9 (b) The department shall develop a board member mentor
10 program through which experienced board members will be trained
11 to act as mentors to newly appointed board members. A mentor
12 member should be assigned to a new board member who serves
13 on a different board. A mentor may be a current or former board
14 member.

15 SEC. 9. Section 4800 of the Business and Professions Code is
16 amended to read:

17 4800. (a) There is in the Department of Consumer Affairs a
18 Veterinary Medical Board in which the administration of this
19 chapter is vested. The board consists of the following members:

20 (1) Four licensed veterinarians.

21 (2) One registered veterinary technician.

22 (3) Three public members.

23 (b) This section shall remain in effect only until January 1, 2017,
24 and as of that date is repealed, unless a later enacted statute, that
25 is enacted before January 1, 2017, deletes or extends that date.

26 (c) Notwithstanding any other law, the repeal of this section
27 renders the board subject to review by the appropriate policy
28 committees of the Legislature. However, the review of the board
29 shall be limited to those issues identified by the appropriate policy
30 committees of the Legislature and shall not involve the preparation
31 or submission of a sunset review document or evaluative
32 questionnaire.

33 SEC. 10. Section 4804.5 of the Business and Professions Code
34 is amended to read:

35 4804.5. The board may appoint a person exempt from civil
36 service who shall be designated as an executive officer and who
37 shall exercise the powers and perform the duties delegated by the
38 board and vested in him or her by this chapter.

1 This section shall remain in effect only until January 1, 2017,
2 and as of that date is repealed, unless a later enacted statute, that
3 is enacted before January 1, 2017, deletes or extends that date.

4 SEC. 11. Section 11506 of the Business and Professions Code
5 is amended to read:

6 11506. This part shall be subject to review by the appropriate
7 policy committees of the Legislature. This part shall remain in
8 effect only until January 1, 2019, and as of that date is repealed,
9 unless a later enacted statute, that is enacted before January 1,
10 2019, deletes or extends that date.

11 SEC. 12. Section 22259 of the Business and Professions Code
12 is amended to read:

13 22259. (a) This chapter shall be subject to review by the
14 appropriate policy committees of the Legislature.

15 (b) This chapter shall remain in effect only until January 1,
16 2019, and as of that date is repealed, unless a later enacted statute,
17 that is enacted before January 1, 2019, deletes or extends that date.